

STATE OF TENNESSEE

Office of the Attorney General



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April 23, 2002

Via Hand Delivery

K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

RE: **TRA Docket No. 02-00429, tariff for promotion for business customers
purchasing frame relay on 24 month or longer tariffed contract**

Dear Mr. Waddell:

Enclosed for filing, please find the original and thirteen (13) copies of the Attorney General's Request for Clarification or in the alternative complaint and Petition to Intervene.

Please contact me if you have any questions.

Sincerely,

Chris Allen
Assistant Attorney General

Enclosures

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: PETITION OF)	
BELLSOUTH)	
TELECOMMUNICATIONS, INC. FOR)	DOCKET NO. 02-00429
APPROVAL OF A PROMOTION FOR)	
BUSINESS CUSTOMERS)	
PURCHASING FRAME RELAY ON A)	
24 MONTH OR LONGER TARIFFED)	
CONTRACT)	

ATTORNEY GENERAL'S REQUEST FOR CLARIFICATION OR IN THE
ALTERNATIVE COMPLAINT AND PETITION TO INTERVENE

Comes Paul G. Summers, the Tennessee Attorney General, through the Consumer Advocate and Protection Division, (hereinafter "Attorney General") pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A), and requests clarification or in the alternative complains and petitions to intervene in this docket in the public interest on behalf of consumers in Tennessee concerning the applicability of resale provisions and the amount of the retail discount and the resale price. For cause the Petitioner would show as follows:

1. The Attorney General is authorized by Tenn. Code Ann. § 65-4-118 (c)(2)(A) to initiate a contested case, and participate or intervene in proceedings to represent the public interest of Tennessee consumers in accordance with the Uniform Administrative Procedures Act (UAPA).
2. In the present docket, BST seeks approval by the Tennessee Regulatory Authority

("TRA") of a promotion which involves the receipt of the waiver of certain charges in exchange for the retail customer entering a 24 month agreement. Additionally, the promotion provides for the receipt of free equipment in exchange for a 36 month agreement.

3. The Attorney General submits there is an issue as to whether or not this promotion is subject to resale. While the enrollment period is less than 90 days the Attorney General is unable to determine from the information filed whether the benefits to be realized from this promotion exceed 90 days. If the benefits to be realized from the promotion exceed 90 days the promotion is subject to resale.¹ The Attorney General submits in order to make this determination the termination provisions of the promotion must be considered. If the retail customer of BellSouth Telecommunications, Inc. ("BST") must in effect reimburse BST for either or both the waiver of charges or the free equipment if the agreement is terminated at any point after the 90 days then the Attorney General submits the retail customers realize benefits beyond the 90 days when they avoid these termination charges and therefore, the promotion is subject to resale.
4. To the extent the promotion is subject to resale, the Attorney General submits the issue becomes one quantifying the amount of the retail discount for the waiver of charges with respect to the 24 month agreement and the free equipment for the 36 month agreement.
5. Once the TRA identifies the retail discount the issue becomes what is the price of the

¹ In the Second and Final Order of Arbitration Awards issued on January 23, 1997 in TRA Docket No. 96-01152 the TRA held that short-term promotions, defined to be promotions offered for a period of 90 days or less need not be offered for resale provided any benefit of the promotion must be realized within the same 90 days. See pages 14 and 15 of the TRA Order.

promotion in the resale market to BST's competitors. The Attorney General submits the resale price is the promotional rate (full retail rate less retail discounts) less avoided costs. This is the approach taken by the Federal Communications Commission ("FCC").² In fact, the FCC in the 1999 FCC Order preempted an Arkansas state statute in furtherance of this interpretation.³ While we do not propose that the FCC would also preempt the TRA's Second and Final Order of Arbitration Awards issued January 23, 1997 in TRA Docket No. 96-01152 the Attorney General submits that the FCC's interpretation is persuasive and provides justification for the TRA to revisit the issue of whether the promotional prices should be reduced by avoided costs in setting the price to be paid by BST's competitors in the resale market.

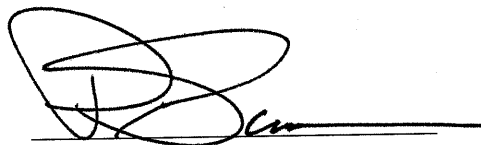
6. Accordingly, the Attorney General requests that the TRA clarify whether or not this promotion is subject to resale, and if so, the wholesale price which would be used in a resale of this promotion and in the alternative grant intervention because of the

² The FCC initially took this position and then reaffirmed it subsequent to the TRA's Second and Final Order of Arbitration Awards issued January 23, 1997 in TRA Docket No. 96-01152. A 1999 FCC order cites the following with approval from paragraphs 948 thru 950 of its First Report and Order in CC Docket 96-98, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: "Therefore, when an incumbent LEC sells to a competing carrier a retail service offered to the incumbent LEC's end-user customers at a temporarily reduced price, the incumbent LEC must apply the wholesale discount to the special reduced rate rather than to the ordinary retail rate, unless the promotional offering is available to end-user customers for fewer than 91 days." The 1999 FCC order is the Memorandum Opinion And Order in CC Docket No. 97-100, In the Matter of American Communications Services, Inc. MCI Telecommunications Corp. Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended ("the 1999 FCC Order").

³ See Ark. Code Ann. Section 23-17-409(d) which generally exempted promotional prices from the resale obligation; see also paragraph 52 of the 1999 FCC Order.

fundamental impact on the price paid by the ultimate customer purchasing the promotion from a competitor of BST through the resale market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul G. Summers", written over a horizontal line.

Paul G. Summers, 6285
Tennessee Attorney General

A handwritten signature in black ink, appearing to read "Chris Allen", written over a horizontal line.

Chris Allen, 13696
Assistant Attorney General
Consumer Advocate and Protection Division
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Nashville, Tennessee 37243-0500
(615)-532-2590

Certificate of Service

I hereby certify that a true and correct copy of the Petition to Intervene was served on parties below via U.S. Mail, postage prepaid, this April 23, 2002.

Guy M. Hicks, Esquire
General Counsel
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300



Chris Allen
Assistant Attorney General

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